

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B06

PLR-136138-14

Date:

February 06, 2015

Legend

Taxpayer =

Shareholder A =

Shareholder B =

Accounting Firm =

Attorney =

Accountant =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This replies to your representative's letter dated September 17, 2014, by which you request on behalf of Taxpayer an extension of time under Treas. Reg. § 301.9100-3(a) to file a Form 4876-A ("Election to be Treated as an Interest Charge DISC") effective as of Date 1.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Facts

Taxpayer is a domestic corporation wholly owned by Shareholder A and Shareholder B. Shareholder A and Shareholder B are individuals engaged in a production activity through a corporation which they own in proportion to their interests in Taxpayer. They are not personally sophisticated in Federal income tax matters. Accountant is a member of Accounting Firm, which through its certified public accountants and other qualified professionals has provided Federal tax advice to individuals and businesses for many years including Shareholder A, Shareholder B, and their business. Attorney is a solo practitioner in general business matters who had represented Shareholder A and Shareholder B's business in the past.

Shortly before Date 1, Shareholder A and Shareholder B learned through an industry association about benefits that an interest charge domestic international sales corporation (IC-DISC) may provide. Shareholder A and Shareholder B consulted Accounting Firm to learn more and then to help them set up an IC-DISC to work with their business. Shareholder A and Shareholder B retained Attorney to form Taxpayer and to prepare the legal documents, but not the Federal tax filings, pertaining to its intended qualification and operation as an IC-DISC. Taxpayer was incorporated on Date 1.

Accountant, having knowledge of these circumstances, agreed with Shareholder A and Shareholder B to take responsibility for Taxpayer's tax filings, including filing of Form 4876-A to qualify Taxpayer as an IC-DISC as of its incorporation. Taxpayer believed that it had met all requirements and taken all steps necessary to thus qualify as an IC-DISC. Taxpayer proceeded to operate as an IC-DISC. Taxpayer did not take any position inconsistent with IC-DISC status. On Date 2, early the next year, Taxpayer timely filed its first tax return, as an IC-DISC.

A few weeks later, on Date 3, Taxpayer received a notice from the Internal Revenue Service ("IRS") stating that the IRS had no record of Taxpayer filing a Form 4876-A. Upon investigation, Taxpayer discovered that no Form 4876-A had been filed. Accounting Firm explained that it had inadvertently failed to obtain and file a completed Form 4876-A.

On Date 4, a few weeks after discovering the initial failure to file Form 4876-A (and a little more than a year after Date 1) Accounting Firm submitted on behalf of Taxpayer a Form 4876-A requesting IC-DISC status effective as of Taxpayer's

incorporation. Accounting Firm accompanied this form with a brief explanation of the inadvertent initial failure to file. But the IRS notified Taxpayer that this election was rejected as untimely for the requested effective date.

Over the course of the next several weeks Taxpayer proceeded to engage representation to prepare and submit the ruling request that is the subject of this letter.

Law and Analysis

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC¹ shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Section 992(b)(1)(B) provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temp. Treas. Reg. § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A and that a corporation electing to be treated as a IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

Treas. Reg. § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. §

¹ An IC-DISC is the type of DISC (domestic international sales corporation) for which current law provides.

301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

In the present situation, the election described in Temp. Treas. Reg. § 1.921-1T(b)(1) is a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards for relief set forth in Treas. Reg. § 301.9100-3.

Based on the facts and representations submitted with Taxpayer's ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A. Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

The granting of an extension of time to make the election is not a determination that Taxpayer is otherwise eligible to make the election or to claim DISC status or benefits. Taxpayer should attach a copy of this letter ruling to its Federal income tax returns for the taxable years to which this letter applies.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Marissa K. Rensen
Assistant to Branch Chief, Branch 6
Office of Associate Chief Counsel
(International)